

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application of Serial No. 78455833
Published in the Official Gazette of May 31, 2005

ELIZABETH GRADY FACE FIRST, INC.)

Opposer,)

Opposition No. 91165585
Serial No: 78/455,833

SPRINT COMMUNICATIONS)
COMPANY L.P.)

Applicant.)

MOTION FOR LEAVE
TO FILE
AMENDED NOTICE OF
OPPOSITION

Assistant Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Attention: Trademark Trial and Appeal Board

Opposer moves for leave nunc pro tunc to July 27, 2005 for filing an Amended Notice of Opposition, a copy appearing at Tab A hereto. On that date Opposer filed the amended notice without notice or knowledge that Applicant had on July 22, 2005 filed and served a response to the original notice of opposition and faxed a courtesy copy to Applicant's then counsel of record (copy at Tab B hereto). The undersigned counsel has discussed this with Applicant's new counsel, Ms. Seyler, who advised that she does not object to the motion. Opposer checked the PTO records on line before filing the Amended Notice of Opposition without a supporting motion.

The amended Notice of Opposition adds a par. 7 to the original Notice of Opposition (copy at Tab C).

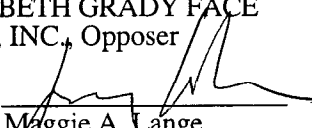
Grant of the motion is requested.



Respectfully submitted,

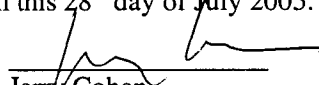
ELIZABETH GRADY FACE
FIRST, INC., Opposer

Date: July 28, 2005

By: 
Maggie A. Lange
Jerry Cohen
Reg. No. 20,522
Perkins Smith & Cohen LLP
One Beacon Street
Boston, MA 02108
617-854-4000
Attorneys for Opposer

Certificate of Service

I certify service of this Amended Notice of Opposition on Julie Seyler, Esq., Abelman, Frayne & Schwab, 150 East 42nd Street, New York, NY 10017-5612, counsel for Applicant by first class mail this 28th day of July 2005.


Jerry Cohen
Attorney for Opposer

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Assistant Commissioner for Trademarks
P.O. Box 1451
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Attention: Trademark Trial and Appeal Board

Opposer, Elizabeth Grady Face First, Inc., a Massachusetts corporation having a principal place of business at 222 Boston Avenue, Medford, Massachusetts 02155 ("Opposer"), believes that it will be damaged by registration of the mark "WITH SPRINT, BUSINESS IS BEAUTIFUL," as shown in Application Serial No. 78455833, in International Class 38 for "telecommunication services, namely, providing multiple user access to a global computer information network; local and long distance transmission of voice and data by means of wireless telephones; telephone communication services; telecommunication network services, namely, providing access to data transmission and reception services via fiber optic networks, audio and video conferencing services" and opposes the same. This Notice of Opposition is submitted in duplicate and the filing fee is enclosed herewith. If any additional

fees are owed, please charge Deposit Account 03-2410, Order No. 31,300-2. A duplicate copy of this Notice of is enclosed for accounting purposes.

As grounds, Opposer states the following:

1. Opposer is the owner of the mark "BUSINESS IS BEAUTIFUL," "Registration No. 1793848, filed February 10, 1993, registered September 21, 1993, and registration renewed in 2003, for "franchising services, namely offering technical assistance in the establishment and/or operation of skin care salons" in International Class 35.

2. Opposer has been using the mark BUSINESS IS BEAUTIFUL in interstate commerce in the United States at least as early as October of 1988, and on information and belief, began using the mark prior to any use by Applicant of the mark WITH SPRINT, BUSINESS IS BEAUTIFUL, or any similar mark. Therefore, Opposer has standing to oppose Applicant's application for registration.

3. Opposer's use of the mark BUSINESS IS BEAUTIFUL is directed at people associated with businesses as well as other consumers. Applicant's use of the mark WITH SPRINT, BUSINESS IS BEAUTIFUL is directed at people associated with businesses as well as other consumers. Both parties' ultimate goods/services store front retail outlets that can be in close proximity and potential customers, including but not limited to business owners and business employees, can easily visit/browse both parties' outlets easily in one shopping trip. Media advertising of both parties' ultimate services are made to the same markets at least in part.

4. Applicant's mark, WITH SPRINT, BUSINESS IS BEAUTIFUL, so resembles Opposer's previously registered mark. BUSINESS IS

BEAUTIFUL, as to be likely, when used on or in connection with the services of the Applicant, to cause confusion, or to cause mistake, or to deceive consumers.

5. Applicant's use or registration of the mark WITH SPRINT, BUSINESS IS BEAUTIFUL, in connection with the listed services, will damage Opposer.

6. Opposer states further that Applicant had communications with Opposer about the likelihood of confusion and stonewalled Opposer, but on information and belief, refrained from passing information concerning the parties' dispute over right to register to the PTO Trademark Law Office 110 which conducted *ex parte* examination of the application. This is an additional ground for refusing registration.

7. Opposer's mark, "Business Is Beautiful," is a famous mark and such fame was acquired prior to the filing date of Applicant's application to register and prior to Applicant's asserted date of first use. Applicant's commercial use and/or registration of "With Sprint Business Is Beautiful: (a) caused dilution and (b) is likely to cause dilution of the distinctive quality of Opposer's mark.

For the foregoing reasons, and for reasons and facts expected to be

developed during this proceeding, Opposer files this Amended Notice of Opposition.

Respectfully submitted,

ELIZABETH GRADY FACE
FIRST, INC., Opposer

Date: July 26, 2005

By: 

Maggie A. Lange

Jerry Cohen

Reg. No. 20,522

Perkins Smith & Cohen LLP

One Beacon Street

Boston, MA 02108

617-854-4000

Attorneys for Opposer

Certificate of Service

I certify service of this Amended Notice of Opposition on William Davison, Esq., counsel for Applicant c/o Spring KSOPHN0312-3A203 6450 Sprint Parkway, Overland Park, Kansas 66251 by first class mail this 26th day of July 2005 and I have similarly filed this Amended Notice of Opposition with the TTAB.



Jerry Cohen

Attorney for Opposer

FAX COVER SHEET

Date: July 26, 2005 **Client Code:** 31399-2

To: William M. Davison, Esq.

Fax #: 913 315 0708

Phone # 913 315 8537

Subject: Opposition No. 91165585

From: Jerry Cohen, Esq. **Direct Dial:** (617) 854-4282

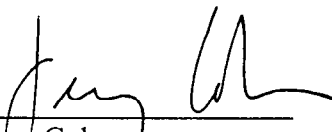
Assistant: Marian E. Jackson **Direct Dial:** (617) 854-4278

Pages: 5 , including this cover sheet.

MESSAGE:

Ladies and Gentlemen:

Enclosed please find a courtesy copy of our Amended Notice of Opposition



Jerry Cohen
Attorney for Opposer

NOTICE: This fax transmission contains confidential information from a law office. The information is intended only for the use of the individual(s) or entity named on this transmission sheet. If you are not the intended recipient, any disclosure, copying, distribution or the taking of any action in reliance on the contents of this faxed information is prohibited, and this entire transmission should be returned to this firm immediately. If you have received this fax in error, please notify us by telephone immediately so that we can arrange for the return of the original documents to us at no cost to you. Thank you for your help.

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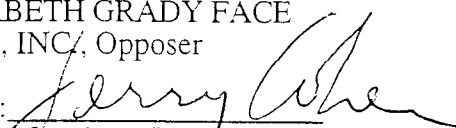
For the foregoing reasons, and for reasons and facts expected to be developed during this proceeding, Opposer files this Notice of Opposition.

Respectfully submitted,

ELIZABETH GRADY FACE
FIRST, INC., Opposer

Date: June 10, 2005

By:


Maggie A. Lange
Jerry Cohen
Reg. No. 20,522
Perkins Smith & Cohen LLP
One Beacon Street
Boston, MA 02108
617-854-4000
Attorneys for Opposer